



State of Louisiana
Louisiana Department of Health
Bureau of Health Services Financing

**NOT FINAL
UNDER CMS REVIEW**

March 17, 2019

Bill Brooks, Associate Regional Administrator
Division of Medicaid & Children's Health
DHHS/Centers for Medicare and Medicaid Services

ELECTRONIC TRANSMISSION ONLY

Re: 1135 waiver request: COVID-19

Dear Mr. Brooks:

On March 11, 2020, Louisiana Governor John Bel Edwards declared a public health emergency due to the 2019 Coronavirus (COVID-19). In response to the COVID-19 public health emergency, the State would like to request the following flexibilities under an 1135 waiver. We ask that the following flexibilities apply to all parishes in the State. This request is in response to the presidential declaration of an emergency or disaster under the National Emergencies Act or Stafford Act and the HHS Secretary's Public Health Emergency Declaration under Section 319 of the Public Health Service Act.

- 1. Waiver of Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessment Requirements:** We respectfully request a blanket waiver be issued to waive the requirement for completing PASRR assessments under 42 USC 1396r and 42 CFR 483.100-483.138.
- 2. Provide Flexibility for Medicaid Fair Hearings during the Emergency Period:** We respectfully request a blanket waiver be issued to temporarily delay aspects of the Medicaid Fair Hearing process. Specifically, allow enrollees to have more than 120 days in the case of a managed care appeal under 42 CFR 438.408(f)(2), or 90 days in the case of a Medicaid eligibility appeal or fee-for-service appeal under 42 CFR 431.221(d) to request a fair hearing.
- 3. Provider Enrollment:** We respectfully request a blanket waiver to allow Louisiana to waive the following screening requirements so that the State may provisionally, temporarily, expedite provider enrollment:

- Payment of the application fee at 42 CFR 455.460
 - Criminal background checks associated with Fingerprint-based Criminal Background Checks at 42 CFR 455.434
 - Site visits at 42 CFR 455.432
 - In-state/territory licensure requirements at 42 CFR 455.412; 42 USC 1395cc(j); 42 USC 1396a(a)(77)l; 42 USC 1396a(kk); and 42 CFR 440.50.
5. **Provider Revalidation Efforts:** We respectfully request a blanket waiver be issued allowing the State to temporarily cease revalidation of providers.
6. **Alternative Settings:** We respectfully request a blanket waiver to certain regulatory and EMTALA requirements under 42 USC 1395dd to allow facilities to provide services in alternative settings, such as:
- A temporary shelter when a provider's facility is inaccessible
 - Permit alternative screening locations for coronavirus outside of the emergency department, but that would still comply with EMTALA requirements. For example, for hospitals looking to divert patients away from emergency department who want to be tested.
 - Permit hospitals to transfer patients to other hospitals prior to stabilization based on capacity demands, available resources, and expertise.
7. **Telehealth originating site:** We respectfully request a waiver of limitations on telehealth and virtual communication relative to originating site at 42 USC 1395m(m)(4)(C).
8. **Telehealth for behavioral health:** We request a waiver of the face to face requirements currently in state plan for Community Psychiatric Support and Treatment (CPST) and Psychosocial Rehabilitation (PSR) given the risk of in person transmission during the COVID-19 public health emergency.
9. **Stark Law Requirements:** We request the following flexibilities under Stark Law requirements:
- Waive Stark Law self-referral sanctions under 42 U.S.C. 1395nn and allow donations of equipment to community physicians that may help avoid emergency department visits and hospital stays.
 - Waive Stark Law requirements under 42 CFR § 411.352(i) and 42 USC § 1395nn(h)(4)(B)(i) relative to productivity bonus methodologies for physicians. This is to assist physicians who may see a drop in patient volume so they are not penalized and can remain solvent to continue treating patients and maintain access to care.
10. **Asset Verification:** We respectfully request a temporary suspension of asset verification program requirements under 42 USC 1396w, particularly since the aged, blind, disabled populations are most vulnerable to COVID-19.

11. Clinical Laboratory Improvement Amendments (CLIA): We request a waiver of federal laboratory requirements, specifically in regards to CLIA certificates for:

- Allowing locations where pathologists are working remotely using the laboratory's validated software.
- Allowing a hospital or academic medical center with a currently active CLIA certificate to extend its accreditation to other laboratory facilities located at that hospital or center. In such circumstances, the additional laboratories shall be under the direction of a member of the hospital or academic medical center who is a PhD or MD with demonstrated expertise in the field of clinical virology or virology research.

12. HIPAA Business Associate Agreements: We respectfully request temporary suspension of the need for a business associate agreement under HIPAA as required under 45 CFR 164.308(b)(3), if using a reasonably secure program for telehealth services.

Additionally, the State is anticipating the submission of State Plan Amendments in the near future in response to COVID-19 in order to request additional federal flexibilities. The State has previously submitted seven Appendix K requests for its 1915(c) waivers on Monday, March 16, 2020:

- 1) LA 0121 – Adult Day Health Care Waiver
- 2) LA 0401 – New Opportunities Waiver
- 3) LA 0361 – Children's Choice Waiver
- 4) LA 0453 – Supports Waiver
- 5) LA 0472 – Residential Options Waiver
- 6) LA 0866 – Community Choices Waiver
- 7) LA 0889 – Coordinated System of Care Waiver

Thank you for your consideration of this request. If you have any further questions, please feel free to contact Jen Katzman, Medicaid Deputy Director, at jennifer.katzman@la.gov or (225) 936-0843.

Sincerely,

Erin Campbell
Acting Medicaid Director

Cc: Jackie Glaze
Tobias Griffin

EC/jlk